

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

HUONG M NGUYEN
(Claimant)

PRECEDENT
BENEFIT DECISION
P-B-482

Case No. 95-14645
Case No. 95-15231

SSA NO. !

OFFICE OF APPEALS NO. LA-TE-50694

ASHIQ A MOMNANI
(Claimant)

SSA NO.

OFFICE OF APPEALS NO. ING-TE-69238

Both cases 95-14645 and 95-15231 involve an individual claimant who has appealed an administrative law judge's decision holding the claimant ineligible for training extension benefits under section 1271(a) of the Unemployment Insurance Code based on a finding that the claimant had applied for the training benefits after receiving his or her 16th week of unemployment insurance benefits.

Pursuant to section 5107, Title 22, Code of Regulations, these appeals are consolidated for consideration and decision as no substantial right of any party will be prejudiced.

STATEMENT OF FACTS

In Case No. 95-14645, the claimant, Ms. Nguyen, filed a claim for unemployment insurance benefits effective March 26, 1995, at which time she was given a "Guide to Unemployment Insurance Benefits" (DE 1275A Rev. 32 (5-93))(handbook) which provides information about benefits including training extension benefits. The following language, found on page 29 of the handbook, constitutes the entire section on training extension benefits:

"The California Training Benefits program allows you, if qualified, to continue receiving your unemployment insurance benefits while in approved training. You must apply before you have received all the benefits in your claim.

"If you apply for training no later than the 16th week of your benefit payments, you may be able to get a Training Extension Claim.

"For more information about training programs, ask us for our publication 'Learn a New Skill While Receiving Unemployment Insurance,' form DE 3550."

On August 1, 1995, the claimant was issued her 16th week of unemployment insurance benefits, which week ended July 22, 1995. The claimant applied for training extension benefits on September 7, 1995, in response to a flyer regarding training that was received in late August. The flyer was mailed from the Employment Development Department (EDD) in Sacramento. Prior to receiving the flyer from EDD, the claimant was unaware of the availability of extended training benefits. Claimant Nguyen did not know of or read the handbook's provisions relating to the availability of extended training benefits.

In Case No. 95-15231 the claimant, Mr. Momnani, filed a valid claim for unemployment benefits effective March 19, 1995. EDD issued the claimant a handbook shortly thereafter. The claimant also received a handbook when he opened his prior claim in March 1994. The claimant applied for training extension benefits on September 6, 1995, which was his 26th week of receiving benefits. The claimant received and read the handbook, but did not understand the provisions regarding training benefits or the need to seek clarification from EDD regarding claim filing procedures or deadlines.

Claimant Momnani decided to seek training in September of 1995 and attended EDD's orientation. It was at the orientation that the claimant learned of the 16 week filing deadline. The claimant testified that he thought that EDD would be issuing him a letter if he were interested in training benefits and that he would receive the letter some time before the expiration of his benefits.

REASONS FOR DECISION

The applicable statute in this matter, Section 1271(a) of the Unemployment Insurance Code, provides as follows:

"Notwithstanding any other provision of this division, any unemployed individual receiving benefits payable under this part, Part 3 (commencing with Section 3501), or Part 4 (commencing with Section 4001), or any other federal unemployment compensation law, who, no later than the 16th week of his or her receiving these benefits, applies for a determination of potential eligibility for benefits under this article and is determined eligible for benefits under this article, is eligible for a maximum of 52 times his or her weekly benefit amount under the provisions of this division. The department shall notify every individual who applies for unemployment compensation in this state of his or her opportunity to receive benefits under this article and to receive extended benefits under this article if application is made pursuant to this section." (Emphasis added.)

We read Section 1271(a) as imposing upon EDD the affirmative duty to notify claimants 1) of their opportunity to receive extended training benefits and 2) that receipt of those benefits is conditioned upon application made pursuant to the requirements of Section 1271(a). In claimant Nguyen's case we determine whether EDD fulfilled its duty to notify claimants of their opportunity to receive extended benefits, and in claimant Momnani's case we decide whether the language found in the handbook is sufficient to fulfill EDD's duty to notify claimants that receipt of extended benefits is conditioned upon compliance with the application procedures found in Section 1271(a).

We take official notice that prior to 1993, EDD's regular practice was to provide claimants with a one-page notice of the extended training benefits and filing requirements, including the requirement that application be made no later than the 16th week of receiving unemployment benefits. In addition, EDD's computer program noted whether the one-page notice was provided to the claimant. Thus, EDD had evidence of the fact that claimants had been notified of the availability of extended training benefits and evidence that the notice included the essential requirements for filing claims under Section 1271(a).

We also take official notice that in or about May, 1993, EDD changed its practices and procedures and ceased providing the one-page notice material to claimants regarding extended benefits. EDD consolidated benefit information on training benefit programs into the claimants' handbook. In addition, the indication of whether the one-page notice was provided to claimants was deleted from EDD's computer screen since that form of notice was no longer being provided.

EDD presently regards the extended training benefit provisions in the handbook as meeting its statutory duty under Section 1271(a) to inform claimants of the opportunity to apply for and receive such benefits. EDD's position in previous cases before this Board has been that the present form of notification given to claimants is consistent with duly adopted regulations, and is therefore sufficient to satisfy Section 1271(a).

Section 1333 of the Unemployment Insurance Code provides that notices required under Article 3 of the code relating to Filing, Determination, and Payment of Unemployment Compensation Benefit Claims shall be submitted in accordance with authorized regulations. Since the notice required under section 1271(a) does not fall under Article 3 of the code, there is no requirement that a regulation regarding section 1271(a) be adopted. Nevertheless, Title 22, California Code of Regulations, Section 1326-1, does set forth the procedures for filing benefit claims. The question of whether compliance with these regulations support EDD's present notification measures must be answered. Section 1326-1(b) states, in relevant part:

"There are four basic steps in the usual procedures for handling a typical unemployment benefit claim. Sections 1326-2 through 1326-13 of these regulations give detailed definitions and procedures applicable to the several different types of claims and should be referred to for greater detail and exceptions to usual procedures."

Thus, to the extent EDD has adopted regulations which provide definitions and procedures for filing different types of claims, said regulations apply by their own terms only to typical unemployment benefit claims. Because claims for extended training benefits require separate application and have a separate limitation period, such claims do not constitute typical claims covered by Section 1326-1 of the California Code of

Regulations. EDD's only regulation specifically addressing written notice is found in Section 1326-1(b)(1)(A), which states in relevant part:

"The department informs the claimant in writing of his or her benefit rights and duties, gives assistance in filing the new claim, and provides written instructions on his or her responsibility to look for work."

This regulation certainly permits EDD to provide written notice of certain benefits, however, it too applies only to typical claims. Further, this regulation begs the question of whether the writing contained in the handbook rises to the level of "inform[ing] the claimant in writing of his or her benefit rights." Therefore, we are not persuaded that EDD's present practice of providing notice of training benefits through the handbook alone is sufficiently supported on the grounds that its procedures are consistent with duly adopted regulations. EDD must comply with the plain language of section 1271(a).

In P-B-466, we recognized that no "good cause" exception to Section 1271(a)'s 16 week filing deadline existed. However, we believe that the purpose of the mandate that EDD "shall notify every individual of their opportunity to receive extended training benefits" is to protect and preserve the rights of claimants who in all likelihood are ignorant of the existence of these benefits. Because most claimants will in fact be ignorant of the existence of extended training benefits and because claimants face absolute foreclosure from receiving extended benefits if application is made beyond the 16 week deadline, it is incumbent upon EDD to do more to notify claimants of extended training benefits than simply include mention of them in the general information handbook.

EDD provides a disclaimer on the handbook itself which tends to inform a claimant that the information contained therein is of a general non-binding nature. The back cover of the handbook states, "This handbook is for general information only, and does not have the force and effect of law, rule, or regulation." EDD may not claim on the one hand that the handbook is for general information only and does not have the force and effect of law, rule, and regulation, while on the other hand claim that a claimant's failure to read the handbook thoroughly and comply with its instructions shuts the door on their ability to receive extended training benefits.

We therefore conclude that where EDD's notice to a claimant of extended training benefits consists solely of providing him or her with the general information handbook, EDD has not met the threshold requirement of providing sufficient notice of extended training benefits as required by Section 1271(a).

In order to satisfy the notice requirement in Section 1271(a), EDD must provide distinct notice of the claimant's opportunity to receive extended benefits. If the information regarding training benefits is to be included in the handbook, which it certainly may, EDD must take some measures to bring the existence of that language to claimants' attention.

Notwithstanding the above, the presumption that an official duty will be presumed to have been done and regularly performed still exists. Evidence Code Section 664. However, this presumption is rebuttable. Old Santa Barbara Pier Co. v. State of California, (1977) 71 Cal. App. 3d 250, 257. Our construction of what is required under Section 1271(a) leads us to the conclusion that claimant Nguyen has sufficiently rebutted this presumption as it relates to EDD's duty to notify claimants of their opportunity to receive extended training benefits. Finding that EDD has failed to adequately perform its duty in this regard, we must answer the question of what effect such failure has on the claimant's application for extended training benefits. For the reasons set forth below, we conclude that EDD is estopped from denying extended training benefits due to claimant Nguyen's failure to apply within the 16th week of her receiving benefits.

Generally, estoppel is not favored in the law and typically requires a) a representation or concealment of material facts, b) made with knowledge of the facts, c) to a party ignorant of the truth, d) with the intent that the latter act upon it, and e) the party must have been induced to act upon it. 11 Witkin, Summary of Cal. Law (9th ed. 1990) Equity, section 177, p 859. However, while it may not be said that claimant Nguyen relied on any affirmative misrepresentation made by EDD, estoppel has been found to arise where the party to be estopped has breached a duty to speak that is owed to the other party. Dettamanti v. Lompoc Union School District, (1956) 143 Cal. App. 2d 715, 721. Also, in P-B-5, we found that misrepresentations sufficient to give rise to estoppel "may occur not only through incorrect statements about what the law provides, but may occur also through omission or a failure to speak where there is a duty to speak and an opportunity to speak." Section 1271(a) imposes upon EDD the duty

to notify claimants about the availability of extended training benefits and the claim filing process itself provides EDD with the opportunity to provide such notice. Since EDD's present notification procedures fail to fulfill this duty, estoppel may appropriately be invoked.

The requirement under Section 1271(a) that application for extended training benefits be made no later than the 16th week of receiving benefits appears to us to be analogous to a statute of limitation. The rationale that failure to comply with a statutory duty to provide notice of rights to benefits will equitably estop a party from asserting a statute of limitations defense has been addressed by California courts in the context of workers' compensation claims. Reynolds v. Workmen's Compensation Appeals Board, (1974) 12 Cal. 3d 726. Labor Code section 5402, as it existed at the time Reynolds was decided, stated that employers "shall notify the injured employee . . . that he may be entitled to benefits under this division." We find this language remarkably similar to that found in Section 1271(a). The Reynolds court held that failure to provide the required notice prevented the employer from raising the technical defense of the statute of limitations in order to defeat the employee's claim for benefits. Reynolds, supra, at 730. Courts have concluded that the basis for the Reynolds decision was equitable estoppel. Hurwitz v. Workers' Compensation Appeals Board, (1979) 97 Cal. App. 3d 854, 873. We find this reasoning applies under these circumstances. Where EDD has failed to give adequate notice of the opportunity to receive extended training benefits and the claimant has made a timely application for extended training benefits upon learning about them, EDD is estopped from denying the claimant's application as being untimely.

Therefore, as to claimant Nguyen, we find that she was not adequately notified of the availability of extended training benefits as required by Section 1271(a) and that EDD is estopped from denying extended training benefits due to claimant Nguyen's failure to apply within the 16th week of her receiving benefits.

We now turn to the issue raised in claimant Momnani's appeal, that is, whether one who in fact reads the notice of extended training benefits found in the handbook has been given sufficient notice under Section 1271(a).

Section 1271(a) requires EDD to notify claimants that they may "receive extended benefits under this article if application is made pursuant to this section." As previously set forth, the notice required by Section 1271(a) may, if properly identified, be provided in the handbook. However, the language used must in fact be sufficient to apprise claimants that application for benefits under Section 1271(a) entails compliance with unique procedures and specific limitation periods.

Section 1271(a) imposes two procedural limitations on the time within which applications for extended training benefits may be made. They are, 1) the claimant must be receiving unemployment benefits, and 2) the claimant must apply no later than the 16th week of his or her receiving benefits. For claimants who are only eligible for 16 or fewer weeks of unemployment benefits, the second of these limitations is moot. Application must be made before their benefits expire. However, for claimants such as Ms. Momnani who are eligible for more than 16 weeks of benefits, the first of these two limitation periods gives way to the second. For while such a claimant is still in active claim status for up to 26 weeks of benefits, the ability to apply for extended training benefits expires at the end of the 16th week of receiving benefits.

Section 1271(a) therefore establishes two separate limitation periods that will be applied to claimants depending upon the length of their benefit eligibility period.

Unfortunately, the language found in the handbook fails to take into account this crucial distinction. We find the language presently found in EDD's handbook to be confusing at best, and to a certain extent, misleading. The handbook given to claimant Momnani states that claimants "must apply before you have received all the benefits in your claim." This could not be a clearer instruction to one who is eligible for 26 weeks of benefits that they have 26 weeks to apply for extended training benefits and is therefore misleading.

It should be noted that this sentence was changed in the version of the handbook which became effective in June of 1995. Unfortunately, the 1995 version is even less clear. The handbook now states that claimants must merely "contact EDD" before receiving all of the benefits in their claim. Telling claimants that they must "contact EDD" before their benefits expire is

substantively different than telling claimants that they must submit their application for extended training benefits prior to the 16th week of receiving their benefits.

In the next sentence found in both the 1993 and 1995 versions of the handbook, claimants are informed that "[i]f you apply for training no later than the 16th week of your benefit payments, you may be able to get a Training Extension claim." However, the most reasonable meaning to be given that statement is that a claimant must find a program or course of training and apply for such training no later than the 16th week of receiving benefit payments. No mention is made of the fact that unless a claimant files an application for extended benefits with EDD prior to the end of the 16th week of receiving benefits, their eligibility for training benefits will expire. Section 1271(a) does not condition receipt of benefits on application for training before the 16th week of benefit payments, but rather on application for a determination of benefit eligibility. This means an application for the benefits themselves. The handbook does not so notify claimants of this requirement.

Finally, the handbook tells claimants that more information about training programs may be obtained by asking for additional EDD publications. Given the misleading nature of the preceding language, merely inviting claimants to ask for more information is insufficient to fulfill EDD's duty to provide notice of the application procedures under Section 1271(a). Even if the handbook's mention of EDD's additional publications were enough to lead a reasonable and prudent person to make further inquiry, such a cursory mention is insufficient to overcome the stated provisions that one may apply for extended training benefits at any time up until one's claim has expired.

If EDD provides a claimant with adequate notice of the application procedures for extended training benefits but the claimant nevertheless fails to apply for training extension benefits in a timely manner, we would have a different issue before us. In the present case, there is insufficient proof that by receiving and reading the handbook alone, claimant Momnani was given adequate notice under the requirements set forth in Section 1271(a).

Having concluded that EDD has not provided the necessary notice under Section 1271(a), we rely on the foregoing discussion

of estoppel to similarly hold that EDD is estopped from denying claimant Momnani's application for extended training benefits as being untimely.

DECISION

The decisions of the respective administrative law judges in Case Nos. 95-14645 and 95-15231 are reversed. The claimants are not ineligible for a training benefit extension due to an untimely application under Unemployment Insurance Code Section 1271(a). The claimants' entitlement to extended training benefits is referred to EDD for consideration of the applications filed by each claimant.

Sacramento, California, April 23, 1996.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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April 24, 1996

PRESS RELEASE

Attached is a newly issued precedent decision of the California Unemployment Insurance appeals Board. The cases involved in this decision address the adequacy of the notice given by the Employment Development Department (EDD) to claimants regarding the availability and application procedures for Extended Training Benefits. In a 7-0 decision, the Appeals Board held that where the sole source of information on extended training benefits given to claimants is that which is found in the Guide to Unemployment Insurance Benefits handbook (handbook), EDD has not sufficiently notified claimants of their opportunity to receive benefits as required by Unemployment Insurance Code section 1271(a). The Appeals Board held also that EDD was required to inform claimants of the necessity of filing a claim for extended training benefits before the end of the 16th week of receiving benefits and that the language found in the most recent version of the handbook was not adequate to inform claimants of this requirement.

Claimant Nguyen filed a claim for unemployment benefits and was given a handbook, on page 29 of which is found the following explanation of extended training benefits:

"The California Training Benefits program allows you, if qualified, to continue receiving your unemployment insurance benefits while in approved training. You must apply before you have received all the benefits in your claim.

"If you apply for training no later than the 16th week of your benefit payments, you may be able to get a Training Extension Claim.

"For more information about training programs, ask us for our publication 'Learn a New Skill While Receiving Unemployment Insurance,' form DE 3550."

Ms. Nguyen did not apply for extended training benefits until after the 16th week of receiving her benefits and did so in response to a flyer that was received from EDD. Prior to receiving the flyer, Ms. Nguyen was not aware of extended training benefits.


Under Unemployment Insurance Code section 1271(a), EDD is required to "notify every individual who applies for unemployment compensation in this state of his or her

opportunity to receive benefits under this article and to receive extended benefits under this article if application is made pursuant to this section."

The Appeals Board held, with regard to Ms. Nguyen, that section 1271(a) imposed upon EDD the duty to give notice to claimants of their opportunity to receive extended training benefits that is distinct from the general information that is found in the handbook. Because EDD failed to give adequate notice, EDD could not refuse to consider Ms. Nguyen's application for benefits because it was filed beyond the 16 week deadline.

Claimant Momnani, on the other hand, received and read the handbook upon filing for unemployment benefits. However, after reading the handbook, he did not understand that no application for extended training benefits could be made past the 16th week of receiving unemployment benefits. Mr. Momnani did not learn of or apply for extended training benefits until he attended an EDD workshop on training, which workshop was held beyond the 16 week filing deadline. The Appeals Board found that section 1271(a) requires EDD to inform claimants that application for extended training benefits entails compliance with unique procedures, specifically, that application must be made before the end of the 16th week of receiving benefits. The Appeals Board held that the language in the handbook was not sufficient to provide claimants that claimants who were eligible for more than 16 weeks of benefits must apply before the end of the 16th week.

Precedent decisions of the Appeals Board are binding on the Employment Development Department and on the Board's Administrative Law Judges.



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